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In the Supreme Court of the United States

October Term, 1977
No. 77-382

FRANK BEAL, SECRETARY, DEPARTMENT OF PUBLIC WELFARE, COMMONWEALTH OF PENNSYLVANIA, et al.,
Petitioners

v.

ELVIRA VECCHIONE, et al.

APPENDIX

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI

1. DOCKET ENTRIES

VECCHIONE v. WOHLGEMUTH, et al.
CA-73-162

Date	Proceedings
1973	
1	Jan. 9, Plff's Motion for leave to proceed in forma pauperis, and Affidavit of Plff. in support thereof, filed.
(1)	Jan. 19, Order granting Plffs' Motion to proceed in Forma Pauperis, filed. EB 1/19/73 entered and copies mailed.
2	Jan. 19, Complaint, filed.
	Jan. 19, Summons exit.
3	Feb. 2, Summons returned, "on 1/24/73 served Dept. of Public Welfare", "on 1/23/73 served Philadelphia State Hospital at Byberry", filed.
4	Feb. 12, Deft's motion to dismiss Plff's complaint memorandum of law & affidavit of service, filed.
5	Feb. 20, Plff. motion for a temporary restraining order & notice thereof, filed.
6	Feb. 20, Plff. motion for a three judge court & notice thereof, filed.

7 Feb. 20, Plff. memorandum in support of plff motion for temporary restraining order, three judge court & for class action & exhibits, filed.

8 Feb. 20, Plff. motion for class action & notice thereof, filed.

9 Feb. 21, Supplemental memorandum in support of plff motion for temporary restraining order, three judge court, & for class action & in opposition to deft motion to dismiss, filed.

10 Feb. 26, Letter dtd. 2/22/73 to Judge Becker from Marx S. Leopold, Esq. Re: Withdrawal of any opposition to plff's Motion for Three-Judge Court, filed.

11 March 1, Order that Hon. Arlen M. Adams U. S. Circuit Judge & Hon. E. Mac Troutman are designated to sit with Hon. Edward Becker for determination of this case, filed. 3-1-73 entered & copies mailed.

12 March 2, Stipulation & Order that provisions of the stipulation are entered of record etc., Judges Adams & Troutman concur in this Order, filed. EB

13 July 30, Order that Hon. James Hunter, III is hereby appointed to replace Hon. Arlin M. Adams, filed. 7/31/73 Entered and copy mailed.

14 Aug. 6, Dfts' assent to motion of plff. for class action, filed.

15 Aug. 10, Order that counsel file with the Clerk of the Court copies of all pleadings & legal memoranda heretofore filed, and all subsequent pleadings for distribution to Hon. James Hunter, III and Hon. E. Mac Troutman, filed. EB 8/13/73 Entered and copies mailed.

16 Sept. 4, Stipulation and Order that stipulations of facts be entered of record as findings of the Court, filed. EB 9/5/73 Entered and copies mailed.

17 Sept. 14, Plff's motion for Summary Judgment upon stipulated facts & Statement of stipulated facts in support of plff's motion for Summary Judgment, filed.

18 Sept. 14, Brief in support of plff's motion for summary judgment upon stipulated facts, filed.

Oct. 4, Hearing on Motion to Dismiss by Dft and Motion for Summary Judgment by Plff. C.A

1974

19 May 10, Partial transcript of hearing of 10-4-73 re: defts' motion to dismiss and plffs' motion for summary judgment, filed.

20 July 11, Opinion and Order, Becker J., wherein it is ordered, adjudged and decreed that §424 of the Mental Health and Mental Retardation Act of 1966, 50 P.S. §4424 is Unconstitutional on its face and as applied in violation of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the extent that it denies plff *et al* adequate notice/opportunity to be heard before taking control of these patients assets, etc.; defts are enjoined from applying said sections in the unconstitutional manner set forth above; that Commonwealth shall restore to plff money taken by Commonwealth when plff was hospitalized at the Phila. State Hospital at Bayberry, filed. 7-12-74 Entered & notice/copies mailed.

21 July 12, Order with Amendment to Opinion so that line 4, page 3 reads ". . . as to all persons who are

not adjudged incompetent, . . ." filed. 7-15-74 Entered & copies mailed.

1975

22 Feb. 7, Motion of Walter Burgess to intervene, notice, certificate of service and memorandum of law in support, filed.

23 Mar. 10, Plff's motion to hold deft in contempt of court, notice, certificate of service and memorandum of law in support, filed.

24 Mar. 11, Affidavits of Dallas Washington and Robert Sprout in support of Burgess' motion to intervene with certificate of service, filed.

25 Mar. 13, Plffs' amended motion for contempt of court and Order fixing 4/4/75 in Courtroom 14 at 10:00 A.M. for hearing re same, filed. 3/14/75 entered and copies mailed.

26 Mar. 25, Affidavit of Joseph Breslin in support of motion for intervention and certificate of service, filed.

27 Apr. 1, Plff's motion for preliminary injunction and affidavit in support, filed.

28 Apr. 2, Supplemental memorandum in support of motion of Burgess to intervene, filed. (certificate of service)

29 Apr. 4, Order that motion of plffs for comtempt is marked "withdrawn" and application of plff-intervenor Buress for preliminary injunction is marked "withdrawn", filed . 4/7/75 entered and copies mailed.

30 Apr. 4, Stipulation and order that the regulations attached shall be fully adopted by the deft Beal on behalf of DPW, etc., and granting Buress' motion to intervene etc., filed.

31 Apr. 22, Certification re compliance of Frank Beal with Court order of 4/4/75, filed.

32 June 5, Copies of collections from Guardian Accounts in State Hospitals, filed.

33 June 12, Appearance of Herbert Newberg as counsel for intervenor plff Buress, filed.

34 June 12, Motion of Buress to amend Paragraph r of order of 4/4/75 to include an allowance of counsel fees and costs from the fund created and certificate of service, filed.

35 Jun. 16, Plff/intervenor's (Buress) motion for contempt, further relief and leave for discovery and certificate of service, filed.

36 Jul. 10, Defts' petition for extension of time to comply with paragraph 4 of Court Order of 4/4/75, etc., filed.

37 Jul. 10, Defts' petition for clarification re full hearing on the merits of the issue, whether or not the funds distributed by Federal Agencies to DPW are within the ambit of the decision and orders of Court, etc., filed.

38 Jul. 11, Plffs' interrogatories to defts and Marx Leopold and certificate of service, filed.

39 Jul. 11, Plffs' notice of depositions of Frank Beal et al and certificate of service, filed.

40 Jul. 11, Plff Buress' motion for direct contempt and appointment of Master and response to defts' petitions for extension of time and clarification, and certificate of service, filed.

41 Aug. 1, Affidavit of Clifford McGill in support of plff's motion for direct contempt and appointment of master, filed.

42 Aug. 12, Intervenor-plff's brief in support of motion for reasonable counsel fee and certificate of service, filed.

43 Aug. 12, Affidavit of David Ferleger, Esq., filed.

44 Aug. 12, Affidavit of Jonathan M. Stein, Esq. relating to intervenor-plff's motion for counsel fees, filed.

Sept. 8, Settlement Conference, Becker, J.

45 Sept. 9, Report of pretrial conference, filed.

Nov. 13, Pretrial Conference, Becker, J.

46 Nov. 14, Report of pretrial conference, filed.

47 Dec. 22, Plff's motion for attorneys fees, notice and certification, filed.

48 Dec. 22, Plff's memorandum of law in support of motion, filed.

1976

49 Jan. 9, Defts' memorandum of law in opposition to plff's motion for attorneys' fees and certificate of service, filed.

50 Feb. 5, Plff-Intervenors motion for a class action & Memorandum of law in support thereof, filed.

51 Feb. 5, Motion of Charles Funk and Ruth Somogyi to intervene, memorandum in support thereof, filed.

52 Feb. 5, Motion of Plff-intervenor Ruth Somogyi and Charles Funk for contempt memorandum in support thereof, filed.

53 Feb. 6, Plff's motion for temporary restraining Order and preliminary injunction, certificate of service, filed.

54 Feb. 9, Plffs' memorandum on power of single judge to conduct contempt and other implementation proceedings and certificate of service, filed.

55 Feb. 10, Petition of Ruth Somogyi and Charles Funk for leave to proceed in forma pauperis with affidavits in support, filed.

56 Feb. 12, Defts' motion to vacate and/or modify consent decree, notice and memorandum of law in support thereof, filed.

57 Feb. 13, Plff's analysis of 12-12-75 pay back data and certificate of service, filed.

58 Feb. 13, Plff's supplemental memorandum of law, filed.

59 Feb. 13, Defts' memorandum of law, filed.

60 Feb. 13, Plffs' certificate of service on 2-6-76 of the Temporary Restraining Order, etc., filed.

61 Feb. 19, Memorandum of plffs and plff-intervenors on proposals by all parties for imterim order, with attached proposed orders, filed.

(51) Feb. 20, Order that motion for leave to intervene after hearing is Denied etc., filed. EB 2-23-76 entered and copies mailed.

62 Feb. 20, Request of Clifford McGill for the production of records and documents by the herein named defts, etc., and certificate of service, filed.

63 Mar. 3, Defts' objections to request of Clifford McGill for Production of Records and Documents, filed.

64 Mar. 9, Stipulation and Order that defts. shall give plff's counsel and the Court at least 24 hrs. advance notice prior to the transfer of or the drawing upon of any funds transferred from the general appropriation of the Dept. of Public Welfare which still remain in interest bearing Renenue Agent Guardian accounts, filed.

65 Mar. 29, Plff's memorandum in opposition to defts' motion to vacate and/or modify, filed.

66 Apr. 2, Plff's certificate of service re plff's memorandum in opposition defts' motion to vacate and/or modify, etc., filed.

67 Apr. 20, Reply memorandum of law in support of defts' motion to vacate and/or modify and certificate of service, filed.

68 Apr. 26, Plff's reply memorandum in opposition to defts' motion to vacate and or modify, filed.

69 May 26, Interim Order, etc., filed. EB 5-27-76 entered and copies mailed.

70 May 26, Second Interim Order, etc., filed. EB 5-27-76 entered and copies mailed.

71 Jun. 18, Plffs' motion for contempt and certificate of service, filed.

72 Jun. 23, Defts' response to motion for contempt, affidavit and certificate of service, filed.

73 Jun. 30, Defts' motion for extension of time in which to complete and report the results of sample, etc. notice thereof, filed.

74 Jul. 16, Stipulation and Order that the time in which a random sample of preliminary opinions shall be redone, and the time in which the resulting information shall be provided to plffs and the Court shall be extended to 8-2-76, etc., filed. EB

75 Jul. 16, Stipulation and Order that be agreeing on the procedures by which a random sample of preliminary opinions is to be redone pursuant to paragraph 15 of this Court's Second Intermin Order of May 26, 1976, no party has waived or in any way prejudiced his of her rights to challenge on any basis the results of the resulting random sample, etc., filed.

76 Sep. 20, Commonwealth defts' notice of deposition of Marx S. Leopold and certificate of service, filed.

77 Sep. 20, Commonwealth defts' notice of deposition of Cecil Maidman and certificate of service, filed.

78 Sep. 29, Deposition of Cecil Maidman, filed.

79 Sep. 29, Deposition of Donald D. Dougherty, filed.

80 Sep. 29, Deposition of Ellwood Shoemaker, filed.

81 Sep. 29, Deposition of Marx S. Leopold, Esq., filed.

82 Sep. 29, Deposition of Donald J. Murphy, filed.

83 Sep. 29, Deposition of John Greecher, filed.

84 Sep. 29, Deposition of Raymond Foote, filed.

85 Oct. 1, Three Judge Court Hearing—on 9-30-76—Motion to vacate or modify Consent Decree—CAV, filed. EB, JH MT

86 Oct. 1, Factual stipulations, filed.

87 Oct. 5, Deposition of Peter W. Brown, filed.

88 Oct. 8, Order that defts' motion to vacate and/or modify the Consent Decree is Denied, etc., filed. EB 10-12-76 entered and copies mailed.

89 Oct. 15, Transcript of testimony of 9-30-76, filed.

90 Oct. 19, Plff's Bill of Costs, notice thereof and certification of counsel, filed.

91 Nov. 4, Plffs' position with regard to matters at issue in defts' proposed stipulation regarding class members' funds and discharge to other facilities and certificate of service, filed.

92 Nov. 4, Stipulation and Order re" Disbursements, etc., filed.

93 Nov. 4, Deft's notice of appeal, filed.

94 Nov. 4, Copy of Clerk's Notice of Appeal to USCA, filed.

95 Nov. 10, Deft's motion for stay, memorandum of law in support and certificate of service, filed.

96 Nov. 16, Memorandum in opposition to defts' motion to stay district Court's Final Order, filed.

97 Dec. 13, Order that the Clerk is directed to file the attached packet of correspondence, etc. filed. EB. 12-13-76 entered and copies mailed.

98 Dec. 13, Correspondence, filed.

99 Dec. 14, Order that the time for transmission of the record to the USCA is extended by three days, etc., filed. EB 12-14-76 entered and copies mailed.

100 Dec. 14, Plff's notice of deposition of Frank S. Beal, filed.

101 Dec. 14, Plff's notice of deposition of Frank Beal, etc., filed.

102 Dec. 14, Intervenor-plff's supplemental brief in support of motion for reasonable counsel fees and affidavit in support, filed.

(2) COMPLAINT

[Filed January 19, 1973]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Class Action
Civil Action
Number 73-162

ELVIRA VECCHIONE, Philadelphia State Hospital at Byberry, Southampton Road & Roosevelt Blvd., Building #W-7, Philadelphia, Pennsylvania,

and

All other persons similarly situated,

Plaintiffs,

vs.

HELENE WOHLGEMUTH, Secretary Department of Public Welfare Commonwealth of Pennsylvania Health and Welfare Building Harrisburg, Pennsylvania,

FRANKLYN R. CLARKE, M.D., Superintendent Philadelphia State Hospital at Byberry, Southampton Road & Roosevelt Blvd., Philadelphia, Pennsylvania,

and

ELWOOD N. SHOEMAKER, Revenue Agent, Philadelphia State Hospital at Byberry, Southampton Road & Roosevelt Blvd., Philadelphia, Pennsylvania,

Defendants

I. PRELIMINARY STATEMENT

Petitioner, ELVIRA VECCHIONE,, who is *sui juris* and who is involuntarily committed to in-patient care in a Pennsylvania state hospital for the insane as a person in need of observation, care and treatment by reason of mental disability under §406 of the Pennsylvania Mental Health and Mental Retardation Act of 1966, 50 Purd. Stat. §4406, brings this action for Declaratory Judgment, Temporary Restraining Order, Preliminary and Permanent Injunction and damages, to enjoin defendants, all state officers performing state functions, from enforcing, operating under and executing §§424 and 501 of the aforesaid Mental Health Act, 50 Purd. Stat. §§4424 and 4501, statutes of statewide application. Petitioner assails these statutes insofar as they provide for summary self help seizure by defendants of any personal property in the possession of, and benefits payable to, petitioner and the subject class that she represents, at the time of their admission or commitment to state hospitals for the insane and thereafter, to be applied in whole or partial satisfaction of liability assessed by defendants extra judicially against them, as unconstitutional on their face and as applied, thus depriving petitioner and members of the class she represents of rights secured to them by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983.

II. JURISDICTION

1. Jurisdiction is conferred upon this Court by 28 U.S.C. §1343(3), (4) which provides for original jurisdiction of this Court in all suits to redress the deprivation under color of state law of any right, privilege or immunity secured by the Constitution of the United States. Jurisdic-

tion is also conferred upon this Court by 28 U.S.C. §1331: the matter in controversy exceeds in value, exclusive of interest and costs, ten thousand dollars ($10,000).

2. Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. §§2201, 2202 and Rule 57 of the Federal Rules of Civil Procedure, which relate to Declaratory Judgments, and by 42 U.S.C. §1983, which provides redress for the deprivation under color of state law of rights, privileges and immunities secured to all citizens and persons within the jurisdiction of the United States by the Constitution and laws of the United States.

III. THREE JUDGE COURT

3. This is a proper case for determination by a three-judge district court pursuant to 23 U.S.C. §§2281 and 2284 inasmuch as plaintiffs seek to enjoin defendants, state officers from enforcement, operation and execution of statutes (50 Purd. Stat. §§4424 and 4501) of statewide applicability on the ground that they are contrary to the Constitution of the United States on their face and as applied.

IV. PARTIES

4. Plaintiffs are:

a) ELVIRA VECCHIONE, a naturalized citizen of the United States, and resident of the County of Philadelphia, Commonwealth of Pennsylvania; and

b) All other persons similarly situated.

5. Defendants are:

a) HELENE WOHLGEMUTH, Secretary, Department of Public Welfare, Commonwealth of Pennsylvania, who is, in her representative capacity, charged with the executive functions of the Department of Public Welfare and under the Mental Health and Mental Retardation Act of 1966, 50 Purd. Stat. §§4401 *et seq.* with the administration of the Mental Health and Mental Retardation program in the Commonwealth, including but not limited to the operation and governance of Philadelphia State Hospital an Byberry (hereinafter referred to as "Byberry").

b) FRANKLYN R. CLARKE, M.D., Superintendent of Byberry, who is charged under the Mental Health and Mental Retardation Act of 1966, 50 Purd. Stat. §§4202 and 4203, and regulations of the Department of Public Welfare promulgated pursuant thereto, with the administration, direction, coordination and operation of Byberry and its programs, including but not limited to supervision of and operation of the office of the Revenue Agent at Byberry.

c) ELWOOD N. SHOEMAKER, Revenue Agent of Byberry, who is charged under the Mental Health and Mental Retardation Act of 1966, 50 Purd. Stat. §§4424 and 4501, with responsibility for the assessing of liability and the taking of any money or other personal property in the possession of any patient at Byberry, and the taking custody of any gifts, legacies, pensions, insurance payments, retirement benefits or payments to which any competent patient at Byberry, or any non-adjudged incompetent person with assets less than twenty-five hundred dollars ($2,500), and applying the aforesaid money, property and entitlements to these costs, without

prior adjudication of liability or attachment proceedings of any kind.

V. CLASS ACTION

6. The named plaintiff brings this action on her own behalf and, pursuant to Rule 28(a), (b)(2) of the Federal Rules of Civil Procedure, on behalf of the class of all persons who are *sui juris,* and all non-adjudged incompetent persons with assets less than twenty-five hundred dollars ($2,500), civilly admitted or committed to observation, care and treatment at any and all state facilities operating under authority of the Mental Health and Mental Retardation Act of 1966 (hereinafter "MH/MR Act") as aforesaid, who are subject under §§424 and 501 of the aforesaid Act to assessment of liability against themselves and to summary seizure of their personal property and entitlements without prior adjudication of personal or other liability or attachment proceedings of any kind.

7. The approximate size of this class is not known to plaintiff but, on information and belief, she alleges that the members of the class can readily be ascertained from information in the sole possession of the defendants and their agents.

8. The requirements of Rule 23 of the Federal Rules of Civil Procedure are met in that:

a) The class is so numerous that joinder of all members is impracticable;

b) There are questions of law and fact common to the members of the class, to wit: whether the challenged statutes violate the Equal Protection and Due Process Clauses of the Fourteenth Amendment

to the United States Constitution, and 42 U.S.C. §1983, on their face and as applied;

c) The claims of the representative party is typical of the claims of members of the class;

d) The representative party will fairly and adequately protect the interests of the class, in that she possesses counsel, Community Legal Services, Inc., which is expert in litigating cases of this type and which will prosecute the case with that vigor commensurate with its complexity and importance; and

e) Defendants have acted on grounds generally applicable to members of the class, thereby making appropriate final injunctive and declaratory relief for the class as a whole.

VI. APPLICABLE STATUTES AND REGULATIONS

9. Byberry is a state hospital for diagnosis, treatment, care and rehabilitation of mentally disabled persons operated under §§202 and 203 of the MH/MR Act, Spec. Sess. No. Oct. 20, P.L. 96 art. II; 50 Purd. Stat. §§4202 and 4203, by the State Department of Public Welfare, and funded, under §307(a)(1) of the MH/MR Act, 50 Purd. Stat. §4307(a)(1), by the Commonwealth of Pennsylvania.

10. Section 501 of the MH/MR Act, 50 P.S. §4501, provides that persons receiving diagnosis, treatment, care and rehabilitation at Byberry are responsible for all costs thereof.

11. Responsibility for assessing personal liability of each patient to defray some costs to the Commonwealth

of his care and maintenance at Byberry, are by force and operation of §501 of the MH/MR Act, *supra.* reposed in the Department of Public Welfare acting through its agent, defendant Shoemaker. Standards for assessment of liability used by the Revenue agent are set forth by the Department at DPW-MH/MR Manual §5200, Appendix II (attached hereto as Exhibit "A").

12. In addition to assessing and collecting personal liability of each patient, defendant Shoemaker is charged under the express terms of §424(1) of the MH/MR Act, 50 P.S. §4424(1), with the duty of taking custody of any or all money or personal property of, and any or all entitlements payable to, each patient who has not been determined by a court of appropriate jurisdiction to be an incompetent person, as that term is defined at §102(3) of the Pennsylvania Incompetents' Estates Act of 1955, February 28, P.L. 1154, art. I, 50 P.S. §3102(3), without prior adjudication by a court of any liability for care and maintenance of the patient and without attachment proceedings of any kind, and applying half thereof to maintain a five hundred dollar ($500) reserve fund for each patient, to be drawn upon by defendant Clarke from time to time to establish a petty cash fund for the patient's personal needs, and applying half thereof to pay the patient's costs arising under §601. Once a reserve fund of five hundred dollars ($500) is established for any patient, defendant Shoemaker applies all patient's property subsequently seized by him to pay the patient's assessed §501 costs.

13. In all cases that the patient's property and/or present entitlements exceeds twenty-five hundred dollars ($2,500), defendant Shoemaker is required by subpart

(4) of §424 to seek, through the State Department of Justice, appointment of a guardian of the estate of the patient pursuant to the aforementioned Incompetent's Estates Act of 1955.

14. If the patient is determined by an appropriate court to be an incompetent person, subpart (5) of §424 of the MH/MR Act requires defendant Shoemaker to turn over all funds seized by him to the incompetent's guardian along with a full and certified accounting.

15. If under this procedure, the patient is determined by an appropriate court to be *sui juris,* subpart (6) of §424 requires defendant Shoemaker to seize control of the property and manage it in the fashion set forth at allegation #12.

16. Under authority of §424, defendant Shoemaker, without the consent or authority of the patient, is authorized to make application to and is without prior hearing of any kind appointed representative payee for United States Social Security OASDI benefits payable to each eligible patient, under Social Security Administration procedures, despite the provisions of §207 of the Social Security Act, 42 U.S.C. §407, which expressly insulates OASDI benefits paid or payable to the patient, from execution, levy, attachment or other like legal process, and which would be a full and complete defense to the patient in an action by the Commonwealth arising under §501 against him, as to all OASDI monies paid or payable to him.

17. In all cases in which the Commonwealth fails to collect all assessed patient liability under the summary procedures established by §424 of the MH/MR Act, and elects to bring a lawsuit against the patient under §501, in addition to the exemption created by 42 U.S.C. §407

as aforesaid, the patient is entitled to raise the defenses arising under §504 of the MH/MR Act (1) that imposition of liability upon him would impose an undue hardship upon him, and or (2) that he is entitled to the reasonable value of unpaid work benefitting the Commonwealth in reduced costs of maintenance and operation of the facility to which he was admitted or committed, performed by him, by way of offset.

VII. FACTUAL ALLEGATIONS

18. Petitioner Elvira Vecchione is a resident of the Commonwealth of Pennsylvania, City and County of Philadelphia, and presently resides at Building W-7 at Byberry.

19. Petitioner is a naturalized citizen of the United States.

20. Petitioner was widowed on or about June, 1972, is seventy (70) years of age, and is entirley without means of support other than periodic Social Security OASDI benefits and her stock of personal property valued at no more than five hundred dollars ($500).

21. By Order of the Philadelphia Court of Common Pleas of October 28, 1971 (Hirsh, J), petitioner was adjudged a person in need of care, observation and treatment pursuant to §406 of the MH/MR Act, and civilly committed to Byberry, where she has remained from November 1, 1971 to the present time.

22. Throughout the period of her hospitalization, petitioner has been and remains *sui juris*.

23. On information and belief, petitioner alleges that she no longer requires hospitalization at Byberry, but requires care and assistance in the performance of her day-

to-day functions. Nevertheless, Byberry declines to discharge her because it is unable to find a bed for her in a licensed nursing home, intermediate care facility or other supervised living setting, which it deems appropriate for her aftercare.

24. On information and belief, petitioner alleges that her hospitalization and the costs thereof have been unduly prolonged and exaggerated not only by the failure of the Commonwealth to discharge her immediately upon her recovery, but by the failure of the Commonwealth throughout to provide her with minimally constitutionally required care and treatment.

25. At the time of her commitment to Byberry, petitioner's monthly Social Security OASDI benefits ceased without notice or explanation to petitioner of any kind, either from the Social Security Administration or from defendants.

26. At the time of her commitment, petitioner was advised that small sums of money in amounts considerably less than her Social Security income, would be given to her as authorized by her attending physician, for her to buy incidentals.

27. Until petitioner requested her counsel to investigate and report to her the reason that she no longer received her Social Security monthly benefits in January, 1973, she had no idea that on or about November, 1971, Byberry, by the predecessor in office to defendant Shoemaker, had applied for and received representative payee status for petitioner's Social Security entitlement, under Social Security Administration procedures, and had received all petitioner's Social Security OASDI payments, amounting to approximately one thousand four hundred dollars ($1,400), since then to the present time.

28. Petitioner, by her counsel, learned that of this amount, over the course of her hospitalization, five hundred dollars ($500) had been placed by defendant Shoemaker in petitioner's reserve fund; approximately two hundred dollars ($200) had been placed by defendant Clarke in petitioner's petty cash fund, and the remaining seven hundred dollars ($700) had been turned over to the Commonwealth in satisfaction of petitioner's assessed liability for the costs of her care and maintenance at Byberry.

29. Throughout the period that petitioner has resided at Byberry, she has been required to perform maintenance and housekeeping work from one to two hours per day, seven days per week, in and about the building in which she resides, to the benefit of, in behalf of and at the oral instances and requests of Byberry, its agents, employees and persons in active concert therewith, for which she received no compensation of any kind.

30. At no time during the period that petitioner has resided at Byberry has she been afforded an opportunity as formally or informally present.

a) Her offsetting claim for the reasonable value of work performed by her to the benefit of the Commonwealth without compensation of any kind, arising under §504 of the MH/MR Act;

b) Her defense, arising under §504 of the MH/MR Act, that the Secretary had made no determination that imposition of any liability upon her §501 would not impose undue hardship upon her;

c) Her defense that the value of her care and maintenance at Byberry was less than the amount assessed by defendants against her; and

d) Her defense, arising under 42 U.S.C. §407, that her Social Security benefits are not reachable by the Commonwealth under §424 or otherwise, in satisfaction of her assessed liability.

31. Petitioner is without adequate remedy at law as to seizure of her property by defendants inasmuch as

a) Under authority of §§424 and 501 of the MH/MR Act, and the procedures adopted by defendants in implementation thereof, petitioner has at no time received, nor will she receive, any prior notice or any prior opportunity whatsoever to challenge seizure of her property by defendants;

b) Under authority of §§424 and 501 as aforesaid, and under the procedures established by defendants, petitioner is wholly without recourse to restore her property to herself pending a final determination of liability; and

c) Under Pennsylvania law and defendant's procedures authorized by §§424 and 501 as aforesaid, defendants are not required to afford petitioner a subsequent opportunity for hearing, final determination of liability and restoration of her property. Under this procedure, the Commonwealth is not obligated to initiate court action or make an accounting of any kind to petitioner or to the court at any time.

32. Due to the loss to petitioner, under the Commonwealth's procedures, of past, present and future rights in her to control and manage her fiscal affairs; and due to the consequent actual and apparent risk attendant upon this involuntary imposition of a middleman in the form of a creditor of petitioner to receive and spend her money, of misappropriation thereof; and due to the loss of her of

interest that the bulk of her income might earn and might have earned, petitioner is irreparably damaged.

33. Because she is and, under authority of the MH/MR Act, will be, denied notice and hearing prior or immediately subsequent to appropriation by defendants of her property, petitioner, a person of advanced age and declining physical powers, is subject to the significant risk that she will in the foreseeable future lose defenses and offsetting claims by the death of her only witness; and is likewise subject to the risk that her defenses and offsetting claims may become time-barred, making appropriate the present action for declaratory and injunctive relief and damages.

34. Petitioner and members of the class that she represents have suffered and continue to suffer irreparable harm and injury by reason of defendants' enforcement of §§424 and 501 of the MH/MR Act in the fashion challenged herein, and have no adequate remedy at law.

VIII. FIRST CLAIM

For a first claim petitioner and all members of the class that she represents incorporate by reference paragraphs 1 through 34 above, and further allege:

35. Section 424 of the MH/MR Act provides that as to all persons who are *sui juris*, and all non-adjudged incompetent persons with assets less than twenty-five hundred dollars ($2,500) civilly admitted or committed to Byberry, defendant Shoemaker shall without application to any court seize any and all possessory property and entitlements payable to such persons, manage them and allocate fifty percent (50%) or more thereof to such persons' liabilities for care and maintenance as assessed by defendant Shoemaker under §501 of the MH/MR Act.

36. As to all persons who are adjudged incompetent and/or who have assets in excess of twenty-five hundred dollars ($2,500) at the time of their admission or commitment to Byberry, §424 of the MH/MR Act requires defendant Shoemaker to initiate proceedings for appointment of a guardian of the estate of such persons if none exists already; and to turn over all money or property of such persons seized by him to their guardians with a full and certified accounting. Thereafter, by force and operation of apposite Pennsylvania law, governing administration of incompetent's estates, payment of any monies to the Commonwealth in satisfaction of its §501 claims, out of the estates of incompetent persons, must be preceded by prior notice to all interested parties and prior judicial hearing and approval.

37. Section 424 of the MH/MR Act and apposite Pennsylvania law governing administration of incompetent's estates, accordingly creates two classes of civilly admitted or committed patients at Byberry for purposes of Due Process safeguards in assessing and collecting liability for care and maintenance arising under §501: one class composed of all competent patients, and all non-adjudged incompetent patients with present assets less than twenty-five hundred dollars ($2,500), who are denied any prior notice or hearing on the question of the correctness of the assessment and the availability of patient funds in satisfaction thereof; and another class composed of adjudged incompetent patients and non-adjudged incompetent patients with property and present entitlements in excess of twenty-five hundred dollars ($2,500), who are afforded both prior notice and hearing on the correctness of §501 assessments and the availability of patient funds in satisfaction thereof.

38. The only difference between these two classes of patients arises from the happenstance that, in addition to being insane, certain patients may also be incompetent and either have been so adjudged at the time of their admission or commitment to Byberry or have assets in excess of twenty-five hundred dollars ($2,500).

39. The classification created by this statute is arbitrary and without state justification and hence is invalid as contrary to the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

IX. SECOND CLAIM

For a second claim petitioner and all members of the class that she represents incorporate by reference paragraphs 1 through 34 above, and further allege:

40. Sections 424 and 501 of the MH/MR Act expressly and as applied by defendants provide that as to all persons who are *sui juris*, and all non-adjudged incompetent persons with assets less that twenty-five hundred dollars ($2,500), admitted or committed to Byberry, defendant Shoemaker shall, without notice and prior hearing of any kind, seize any and all property and entitlements payable to such persons, deprive them of control thereof and allocate fifty percent (50%) or more thereof to satisfy such persons' liabilities for care and maintenance at Byberry as assessed by defendant Shoemaker.

41. To the extent that these statutes fail to provide prior notice to persons subject thereto and prior opportunity for full and fair hearing on the extent of §501 liability, and availability of patient assets in satisfaction thereof, they are invalid as contrary to the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

X. PRAYER FOR RELIEF

WHEREFORE, petitioner, on her own behalf and on behalf of all others similarily situated, respectfully prays this Honorable Court:

1. To assume jurisdiction of this action and convene a three-judge District Court pursuant to 28 U.S.C. §§2281, and 2284 to determine this controversy.

2. To determine by order, pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure, that this action be maintained as a class action.

3. To enter a declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure, declarings that §§424 and 501 of the MH/MR Act, insofar as they authorize defendants' practice of seizing assets of all competent civilly admitted or committed patients and all non-adjudged incompetent civilly committed or admitted patients with assets less that twenty-five hundred dollars ($2,500), and managing such assets and allocating fifty percent (50%) or more thereof to pay patient liabilities as assessed by defendants, without prior notice and hearing of any kind, are unconstitutional on their face and as applied as repugnant to the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States.

4. To enter preliminary and permanent injunctions, pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining defendants, their successors in office, and all persons in active concert and participation therewith from seizing, managing and allocating any and all assets paid or payable to petitioner and all members of the class that she represents as aforesaid, without prior notice and without affording them a prior opportunity for a judicial

determination of liability and availability of patient funds in satisfaction thereof.

5. To enter preliminary and permanent injunctions, pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining defendants, their successors in office, agents, employees, and all persons in active concert and participation therewith, from failing to make an accounting to all subject patients, and from withholding all monies received by them in the past and that may be received by them hereafter, and reasonable interest thereon, under authority of the aforesaid unconstitutional statutes, from all subject patients.

6. Pursuant to Rule 54(d) of the Federal Rules of Civil Procedure, allow petitioner her costs herein, and grant petitioner and all other persons similarly situated such additional or alternative relief, including payment of monies wrongfully withheld and reasonable interest thereon, as this Court may deem just, proper and equitable; and

7. Retain jurisdiction over this matter.

Respectfully submitted,

(s) Joel Brewer
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PE 5-6101

Dated: January 19, 1973

EXHIBIT "A"

COUNTY MENTAL HEALTH & MENTAL RETARDATION PROGRAM, SERVICE CONTENT OF THE PROGRAM

5200 Appendix II

DETERMINING COSTS OF SERVICE AND LIABILITY FOR COSTS OF SERVICE

1. DETERMINING COSTS OF SERVICES PROVIDED BY THE COUNTY PROGRAMS

1.1 *Services Operated Directly by the County or Provided by the County Through Contractual Arrangements*

1.11 *Determining Costs*

The costs of providing services are expected to vary with the nature of the services provided, the varying combinations of staff of Base Service Units and other facilities and agencies which tailor and adapt their programs to the needs of the population they are serving, as well as to various other factors. Facilities and agencies are encouraged to develop schedules of charges in terms of units of services that reflect as accurately as possible the actual cost of providing service and that will result in as simple schedules of charges as possible. Costs for client services shall not include costs for training, research, or other activities not essential to the provision of services to clients. Costs of services shall be determined either by the Admin-

istrator or the contracting facility (whichever is more appropriate) and shall be subject to State audit.

1.111 *Special Note on the Initial Contact*

One of the primary goals of a public mental health and mental retardation program is to provide easy access to treatment services and to encourage people to seek help. In addition, many people seeking such help will be found not to need mental health and mental retardation services, but services of other community agencies to which they can be referred. Therefore, there shall be no fee charged for the initial contact with any Base Service Unit nor shall any financial liability be incurred for the initial contact. The initial contact, broadly interpreted, refers to the contact necessary to determine whether or not the individual is in need of the diagnostic and treatment services of the Base Service Unit and the county program, and to arrange for such services.

1.2 *Services Purchased by the County on a Fee-For-Service Basis for individual Clients*

1.21 *Determining Fees to be Paid by the County on Behalf of Clients of the County Mental Health/Mental Retardation Program and Authorized on MH/MR 11 (Authorization for Service)*

1.211 If the service to be provided is covered by the Fee Schedule of this Appendix, the maximum fee to be paid will be that listed in this Schedule.

1.212 If the service to be provided is not covered by the above Fee Schedule, the fee to be paid shall be that established by the facility or agency furnishing the service,

provided that such charge reflects the usual costs of the facility or agency providing such services and does not exceed the prevailing charges for similar services.

(a) For Interim Care, the maximum fee for which the State will participate in payment shall not exceed the average per diem cost of care in the State School and Hospitals.

1.213 Under the Act all moneys due by reason of any liability imposed by this act upon any person for care and treatment for which the county makes an expenditure shall be collected by the county. Thus, where service has been provided for a client by a Base Service Unit, by a service funded under contract, or where the service has been purchased by the county for the client on a fee-for-service basis, the county shall collect the clients liability as determined by the Base Service Unit, for the costs of such services.

2. DETERMINING CHARGES TO CLIENTS

The maximum liability a client has for paying for the costs of services provided him shall be determined by following the procedure below in Section 3.

2.1 If client's maximum liability per month exceeds total costs of service provided during month client is charged full amount of costs.

2.2 If client's maximum liability is less than costs of providing services for that month, client shall be charged the amount of his maximum liability.

2.3 If there are extenuating circumstances warranting the modification or abatement of the above charges the procedure outlined in 5 shall be followed.

2.4 If the costs of services to the client are to be paid for by the Medical Assistance program, the charges to that program shall be the costs of services provided up to the maximum payable under the MA program (see Fee Schedule of this Appendix).

2.5 If the client's services are to be paid for in total or in part by other third party payments than Medical Assistance, the client remains liable for any costs in excess of such payments up to the amount of his maximum liability.

3. DETERMINING MAXIMUM LIABILITY

Following the initial determination of liability, there shall be at least an annual redetermination of liability of clients receiving continuous service.

The order of liability for costs of services shall be 1) the client, 2) the client's spouse, 3) the client's parents and children. (Legally Responsible Relatives are limited to the client's spouse, parents and children).

The extent of the client's and/or his legally responsible relative's maximum liability for the costs of services provided him over and above that paid for by third party payments and all other payments shall be determined as follows:

3.1 *Determine Monthly Adjusted Income*

This is income after all allowable deductions that can be used to meet the costs of services provided. Income from employment is income after deductions not available for purposes other than for which deducted, income from self-employment or business is net profit after deductions

for taxes and required deductions over which individual has no control.

If income fluctuates from month to month due to the nature of the occupation or other reasons, 1/12 of the previous 12 months income shall be used.

3.11 *Additional Allowable Deductions*

a. Deductions for dependents—$300 per month for the first dependent plus $60/month for each additional dependent. (e.g. family of four—$480). A dependent is anyone defined as such for federal income tax purposes.

b. Monthly equivalent of federal income tax payable above actual deductions (based on previous years experience; if deductions exceeded tax due, excess should be added to adjusted income).

c. If salaried, $35 per month for work expenses for each salaried income. Larger expenses due to unusual circumstances may be deducted if demonstrable.

d. Expenses for maintaining a dependent outside the home such as a student, a resident in an institution, or a separated or estranged dependent for whom one is providing support.

e. Expenses for medical care in excess of $8 per dependent per month, including costs of health insurance.

3.12 *Verification of Income*

Shall be on basis of any documentary evidence (pay stubs, employer statements, income tax statements, etc.) or by affidavit.

3.2 *Maximum Liability for Residential Service Under the County Program*

This service includes all services in which the client resides away from home except short-term inpatient care. The maximum liability per month for these services provided shall be the amount represented by the Adjusted Monthly Income divided by the number dependent on the income.

3.3 *Maximum Liability for Non-Residential Services (other than exempted services)*

3.31 First 3 months of service—one-half of the monthly adjusted income.

3.32 4th month thru 12th month—one-half of the monthly adjusted income divided by the number of dependents.

3.33 Service beyond 1 year—the liability determined in 3.32 shall be reduced 10% per year for each year in excess of one (i.e.—liability starting the 13th month shall be 90% of that of the 4th thru 12 month; starting the 25th month it shall be 60% of that of the 4th thru 12th month; etc.)

3.4 *Services Exempted from Liability*

No liability shall accrue for care in the following services:

3.41 *Day Care Services*

Such services are in lieu of services provided through the public educational system for which parents pay by way of taxes. To impose a liability for these services in addition to taxes paid would result in substantial hardship upon the legally responsible relatives.

3.42 *Sheltered Workshop Services*

The basic purpose for this program is to provide an opportunity for the mentally disabled to be engaged in a useful occupation within his limits and to enjoy a measure of feeling of independence and self-reliance. To hold relatives responsible for paying for such services is to negate these very feelings and be detrimental to the management of the client's disorder.

4. LIABILITY OF LEGALLY RESPONSIBLE RELATIVES

In the event that a client's liability is abated or modified by the Secretary pursuant to Section 504 of the Act, no liability shall accrue to such patient's legally responsible relatives by virtue of such abatement. When it becomes apparent that a contact with the legally responsible relatives would cause hardship on the patient by being detrimental to his treatment, such contact shall not be made.

5. ABATEMENT OR MODIFICATION OF LIABILITY

There may be circumstances warranting the modification or abatement of the above determined liability. The request for abatement or modification should insofar as possible be prepared by the client or his legally responsible relative. Staff of the Base Service Unit or County Administrator or other providers of service should provide all possible assistance in the preparation of these requests.

The requests should be prepared in duplicate and addressed to the Secretary of Public Welfare with a copy to the County Administrator. The request should contain:

a) Identifying data as to client—name, sex, age, address

b) Service to be provided and anticipated costs

c) Copy of information used to determine liability

d) Resources not listed in c that could possibly be used to meet costs of care including bank deposits, stocks, bonds, and other valuable assets including the value of more than one automobile. Do not include such items as household furniture and appliances, and resident real property (property in which the person lives). Also to be excluded are income producing non-resident real property if its value is reasonably related to the amount of income resulting or expected to result from ownership of such property, as well as any tools, equipment, or stock necessary to obtain income.

e) Circumstances warranting the requested abatement or modification such as unusual installment payment, payments on accumulated debts, unusal required rental or mortgage payments or other unusual expenses or extenuating circumstances tending to support the request for abatement or modification.

After review of the above information by the Secretary and the Attorney General, the Department sends a

notification of the decision to the client or his responsible relative. A copy is sent to the Administrator and two are forwarded to the provider of service who attaches a copy to the invoice.

5.1 *Appeal*

If the request of the client or his legally responsible relative is denied, they shall be advised by the Department that the decision may be appealed pursuant to Section 606 of the Act.

5.2 *Request for Abatement Initialed by the Court*

The county is responsible for collecting the liability resting upon the client and/or his legally responsible relatives for the costs of any services provided under the county program. In the event the county is unable to collect such costs because of refusal to pay, the unavailability of the client and/or his family, or similar circumstances, the county may request the Department to discharge the liability and to relieve them of this responsibility. Although, such requests must be for individual cases the requests may be grouped together as a periodic request for all cases to be considered for that period. All such requests must carry a statement as to what steps have been taken by the county to collect the amounts due and as to why it would be advisable for the Commonwealth to discharge such liability.

6. FEE SCHEDULE

The following schedule lists those fees especially applicable to the County Mental Health & Mental Retardation program and includes those abstracted from Supplemental